

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: McKenzie Dean	Team: Squad #2	CCRB Case #: 202003815	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 10:15 PM	Location of Incident: Washington Avenue, between Fulton Street and Atlantic Avenue	Precinct: 88	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 06/05/2020 1:32 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/05/2020 1:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Kitwane Lewis	04105	951915	INT CIS
2. POM Daniel Auguste	10610	961629	PSA 3
3. POM Matthew Erdman	08314	960500	077 PCT
4. INS Jesse Lance	00000	923789	H BKLYN
5. POM Kevin Forrester	26915	957596	090 DET
6. POM Corey Johnson	13116	960090	077 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Luis Alicea	00339	929604	088 PCT
2. POM Clifford Perch	17833	930929	088 PCT
3. SGT Alexis Yanez	02335	953586	106 PCT
4. SGT Christophe Battaglia	05622	954529	FLT SVC
5. POM Casey Coglianese	19413	962323	106 PCT
6. DI William Glynn	00000	932718	081 PCT
7. DI Timothy Skretch	00000	926130	079 PCT
8. CPT Ryon Malcolm	00000	925654	088 PCT
9. POF Janelle Nerette	15373	956972	H BKLYN
10. CPT Danny Murria	00000	932992	PBBN
11. LT Randy Shapiro	00000	920831	CD IRS
12. DI Kenneth Noonan	00000	924257	CD IRS
13. SGT Jason Reisgerzog	04576	955370	079 DET
14. POM Andrae Fernandez	28309	945713	H BKLYN
15. POM Nathaniel Lester	18736	961885	077 DET
16. SGT Kevin Lynch	04007	938896	H INV U

Witness Officer(s)	Shield No	Tax No	Cmd Name
17. POM Jorge Ramos	03540	964719	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A.INS Jesse Lance	Force: Inspector Jesse Lance struck § 87(2)(b) with a nightstick/asp/baton.	
B.INS Jesse Lance	Force: Inspector Jesse Lance used physical force against § 87(2)(b)	
C.POM Corey Johnson	Force: Police Officer Corey Johnson used physical force against § 87(2)(b)	
D.INS Jesse Lance	Untruthful Stmt.: Inspector Jesse Lance provided a misleading official statement to the CCRB on August 11, 2021.	
E.POM Corey Johnson	Untruthful Stmt.: Police Officer Corey Johnson provided a misleading official statement to the CCRB on September 8, 2021.	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Case Summary

On June 5, 2020, § 87(2)(b) filed this complaint with the CCRB over the phone. This incident received media attention (**BR 32-BR 35**) and was placed on the agency's sensitive case list.

On June 4, 2020 at 10:15 PM, Inspector Jesse Lance, of Housing Borough Brooklyn, struck § 87(2)(b) with a baton from behind during a protest in the vicinity of Washington Avenue and Fulton Street in Brooklyn (**Allegation A: Force – Nightstick as club**, § 87(2)(g)). Immediately after, officers surrounded § 87(2)(b) and brought him to the ground (**Allegation B: Force – Physical force**, § 87(2)(g)). § 87(2)(b) a member of the press documenting the protest, became caught up in the crowd of protesters and officers and fell to the ground. § 87(2)(b) got up and began walking away, when Police Officer Corey Johnson, of the 77th Precinct Detective Bureau, pushed him from behind (**Allegation C: Force – Physical force**, § 87(2)(g)). § 87(2)(b) received summons § 87(2)(b) from Police Officer Daniel Auguste, of PSA 3, for violating an emergency curfew order (**BR 39**).

Inspector Jesse Lance provided a misleading statement during his CCRB interview on August 11, 2021 (**Allegation D: Untruthful statement – Misleading official statement**, § 87(2)(g)) and Police Officer Corey Johnson provided a misleading statement during his CCRB interview on September 8, 2021 (**Allegation E: Untruthful statement – Misleading official statement**, § 87(2)(g)).

Five BWC requests for this case were returned with negative results (**BR 23-BR 27**). § 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

In her initial complaint, § 87(2)(b) provided a link to a Twitter post § 87(2)(b) which included a video of the incident (**BR 21**). The video was taken by § 87(2)(b) who posted the original version of the video on his Twitter account (**BR 40**). § 87(2)(b) provided photos of the incident to the investigation, which are attached in IA #378 (**BR 41**). TARU footage was obtained, but it does not capture the incident (**BR 22**).

Findings and Recommendations

Allegation (A) Inspector Jesse Lance struck § 87(2)(b) with a nightstick/asp/baton.
Allegation (B) Inspector Jesse Lance used physical force against § 87(2)(b)

§ 87(2)(b) was interviewed on June 17, 2020 (**BR 01**), § 87(2)(b) was interviewed on July 17, 2020 (**BR 02**), and § 87(2)(b) was interviewed on July 31, 2020 (**BR 03**). The investigation was unable to obtain statements from § 87(2)(b), § 87(2)(b) and § 87(2)(b).

Police Officer Luis Alicea was interviewed on October 1, 2020 (**BR 04**). Police Officer Casey Coglianese was interviewed on January 28, 2021 (**BR 05**). Sergeant Alexis Yanez was interviewed on February 10, 2021 (**BR 06**). Deputy Inspector William Glynn was interviewed on March 23, 2021 (**BR 07**). Sergeant Christopher Battaglia was interviewed on March 24, 2021 (**BR 08**). Police Officer Auguste was interviewed on April 13, 2021 (**BR 09**). Captain Ryon Malcolm was

interviewed on July 12, 2021 (**BR 10**). Sergeant Lewis was interviewed on July 21, 2021 (**BR 11**). Police Officer Erdman and Police Officer Janelle Nerette were interviewed on August 4, 2021 (**BR 12; BR 13**). Inspector Lance was interviewed on August 11, 2021 (**BR 14**). Police Officer Johnson was interviewed on September 8, 2021 (**BR 45**).

The video of the incident shot by § 87(2)(b) (**BR 21**) begins as a white-shirted officer, identified by the investigation as Inspector Lance, approaches § 87(2)(b) from behind. § 87(2)(b) is slowly walking on the sidewalk with his bike with his legs straddled on either side of it. § 87(2)(b) is looking behind him over his shoulder as he is walking away from Inspector Lance. Inspector Lance strikes § 87(2)(b) with a baton from behind, hitting him in the upper back on his backpack. § 87(2)(b) continues walking several more steps as Inspector Lance strikes him with the baton a second time in the same spot. After the second baton strike, a voice repeatedly asks, “What did I do?” At 00:03, Inspector Lance grabs § 87(2)(b) shoulders from behind and holds onto him as he is still facing in the away from Inspector Lance. At 00:05 into the video, multiple officers surround § 87(2)(b) pull him to the ground, and hold him down. As they do this, a voice can be heard asking, “What did I do?” and saying, “I didn’t do anything.”

§ 87(2)(b) stated she was observing the protest when she noticed a group of officers running in the direction of a crowd of protesters on the sidewalk of Washington Avenue. Shortly after, § 87(2)(b) saw officers taking § 87(2)(b) who was handcuffed, across Washington Avenue. Though § 87(2)(b) did not witness § 87(2)(b) being taken into custody, she saw § 87(2)(b)’s Twitter post, which included a video of the incident (**BR 21**), and which she provided to the investigation.

§ 87(2)(b) stated he was a journalist reporting on the protest and he was wearing press credentials around his neck. When he was near the intersection of Washington Avenue and Fulton Street, officers “made their move” by rushing into the intersection and pushing protesters south on Washington Avenue. Many officers had their batons out and were “liberally” striking protesters with them. At this time, § 87(2)(b) noticed multiple officers “really laying into” § 87(2)(b). § 87(2)(b) appeared to be trying to move out of the officers’ way as they were beating him with batons. § 87(2)(b) stated that before the events depicted in the video of the incident (**BR 21**), officers were hitting § 87(2)(b) with batons in the middle of the street. The officers followed him and continued hitting him with their batons. § 87(2)(b) did not know if he witnessed all the force the officers used against § 87(2)(b). He did not witness § 87(2)(b) do anything to provoke the force that the officers used against him.

§ 87(2)(b) was in the vicinity of the incident location while § 87(2)(b) was being taken into custody, but he was not a witness to the force used against him.

Pages four and five of the PDF of photos taken by § 87(2)(b) during the incident (**BR 41**) depict Inspector Lance and his partner, Police Officer Nerette, in the background, standing next to § 87(2)(b) who is being restrained by officers on the ground near his bike. The officer whom Inspector Lance and Police Officer Nerette identified in these photos in their CCRB interviews as Inspector Lance is the same officer who, in the video footage shot by § 87(2)(b) showing what occurred seconds before the moments captured in these photos, strikes § 87(2)(b) with the baton.

None of the officers had an independent recollection of the force used against § 87(2)(b) during the incident or the circumstances leading up to it. While Inspector Lance stated he could not definitively identify himself as the officer striking § 87(2)(b) with a baton in the video of the incident, he did identify himself in the photos that were taken contemporaneously with the video as the officer who corresponds to the officer who did this in the video (**BR 41**). Inspector Lance’s partner, Police Office Nerette, also identified him as that officer in the photos.

Police Officer Auguste stated he responded to a report of a disorderly group at the incident location. Upon his arrival, he encountered a tall light-complexioned black male Captain or Inspector, who was identified by the investigation as Inspector Lance. Inspector Lance was standing with § 87(2)(b) who was in handcuffs. Police Officer Auguste did not recall being told how § 87(2)(b) was handcuffed or taken into custody. Inspector Lance instructed Police Officer Auguste to bring § 87(2)(b) to the 78th Precinct stationhouse and issue him a summons, which he did.

While at the stationhouse, § 87(2)(b) told Police Officer Auguste that he had been coming from work and he had not been involved in the protest. He stated he had just been standing on a corner when officers “attacked” him and hit him with their batons. He said officers put him on the ground, handcuffed him, and punched him several times on his right leg. Police Officer Auguste observed bruising on § 87(2)(b) leg and he complained of pain. Police Officer Auguste called an ambulance and § 87(2)(b) was treated at the stationhouse with ice packs. Police Officer Auguste issued § 87(2)(b) a summons for violating curfew and released him.

Patrol Guide Procedure 221-01 (BR 30) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. The Patrol Guide states that the use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death. In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

P.G. Procedure 221-02 (BR 31) states that members of the service should not use impact weapons such as batons on persons who are passively resisting. The Patrol Guide defines passive resistance as minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with a lawful command and stands motionless and/or a subject going limp when being taken into custody. The Patrol Guide defines active resistance as physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. It defines active aggression as a threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

Given that the video shows § 87(2)(b) walking slowly by himself in front of and in the same direction as the officers, that § 87(2)(b) was alone, that Inspector Lance was accompanied by a

group of officers, and that § 87(2)(b) was ultimately summonsed for only a curfew violation, he could not have reasonably been perceived as a threat to himself, officers, or bystanders. Moreover, given his body language, his repeated questioning of the officers about what he had done, and his statements to Police Officer Auguste that he was on his way home from work, had just been standing on the corner, and had not been involved in the protest when officers “attacked” him, the preponderance of the evidence suggests § 87(2)(b) was unaware, as indicated by his response in the video, that he was even being stopped, and was not actively resisting custody or attempting to evade arrest by flight. Furthermore, the video footage does not show § 87(2)(b) appearing to be actively aggressive or actively resistive to the officers before or while the force is being used against him and he does not appear to refuse any verbal orders. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Police Officer Corey Johnson used physical force against § 87(2)(b)

§ 87(2)(b) stated that just seconds after he witnessed § 87(2)(b) being hit with batons, he fell backward on his back onto a pile of garbage bags with his bicycle on top of him. The officers continued “advancing” down Washington Avenue and continued pushing protesters around § 87(2)(b). § 87(2)(b) stood up and was immediately pushed from behind, causing him to fall forward onto his hands and knees on the ground. § 87(2)(b) believed he “bounced off” another officer and that he may have run into this officer’s outstretched baton during his fall to the ground. § 87(2)(b) did not see who pushed him.

At 00:10 into the video of the incident (**BR 21**), § 87(2)(b) falls backward onto a pile of garbage bags. At 00:20, an unidentified officer reaches toward § 87(2)(b)’s hand and pulls him up. § 87(2)(b) immediately grabs his bike, turns away from the officers, and begins walking away from where § 87(2)(b) is being restrained. At 00:25, Police Officer Johnson extends his right arm and pushes § 87(2)(b) in the back as § 87(2)(b) is facing away from him. § 87(2)(b) falls forward towards Sergeant Lewis, who is facing away from § 87(2)(b) and is walking away. § 87(2)(b) appears to fall into Sergeant Lewis’ elbow and he falls to the ground again.

Pages one through seven of the PDF of photos taken by § 87(2)(b) during the incident (**BR 41**) depict Police Officer Erdman holding his baton across his body and facing away from where § 87(2)(b) is on the ground being restrained by officers. Pages 12 through 15 of the PDF depict Police Officer Johnson approaching § 87(2)(b) as he is getting up from the ground. Page 17 of the PDF depicts Police Officer Johnson and Police Officer Erdman several feet away from each other as Police Officer Johnson has one of his hands on § 87(2)(b)’s back. The officer whom Police Officer Johnson identified in these photos in his CCRB interview as himself is the same officer who, in the video footage shot by § 87(2)(b) pushes § 87(2)(b).

None of the officers had an independent recollection of the force used against § 87(2)(b) during the incident. While Police Officer Corey Johnson stated he could not definitively identify himself as the officer pushing § 87(2)(b) in the video of the incident, he did identify himself in the photos that were taken contemporaneously with the video as the officer who corresponds to the officer who did this in the video (**BR 41**). Upon viewing the video of the incident slowly scrubbed from 00:27 to 00:29 (**BR 21**), Police Officer Johnson stated he did not see an officer push the civilian with the white shirt from behind and said he did not think that what is depicted in this part of the video is a push from behind.

Patrol Guide Procedure 221-01 (BR 30) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.

Although Police Officer Johnson stated he did not think that the video of the incident depicts § 87(2)(b) being pushed, given that this footage shows an officer extending his arm into § 87(2)(b)'s back and § 87(2)(b) falling forward immediately after, and that § 87(2)(b) stated he was pushed in this moment, the investigation determined by a preponderance of the evidence that § 87(2)(b) was pushed by the officer depicted in the video, who is the same officer that Police Officer Johnson identified as himself in photos taken contemporaneously during the incident.

Despite being in the vicinity of an arrest situation, it would not have been reasonable to have perceived § 87(2)(b) as a threat to a member of service or a third person in this moment, as he was turning and walking away from where § 87(2)(b) was being taken into custody in the direction that officers appeared to be leading civilians. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Inspector Jesse Lance provided a misleading official statement to the CCRB on August 11, 2021.

As previously discussed, despite Inspector Lance stating he was unable to identify himself as the officer striking § 87(2)(b) with a baton in the video of the incident (BR 21), he identified himself in photos taken after that moment (BR 41). Furthermore, even after being shown the video footage, he denied having any knowledge of the incident.

Administrative Guide 304-10 defines a misleading statement as a statement that is intended to misdirect the fact finder, and materially alter the narrative by making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts (BR 38).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Police Officer Corey Johnson provided a misleading official statement to the CCRB on September 8, 2021.

As previously discussed, despite Police Officer Johnson stating he did not recognize any officers depicted in the video of the incident (BR 21), he identified himself in the photos taken contemporaneously with the video as the officer corresponding to the officer who pushed § 87(2)(b) in the video (BR 41). Moreover, upon viewing several photos of his partner on the date of the incident, Police Officer Erdman, Police Officer Johnson stated he did not recognize the officer and said he was unable to tell whether he was from his command. Furthermore, even after being shown the video footage, he denied having any knowledge of the incident.

Administrative Guide 304-10 defines a misleading Statement as a statement that is intended to misdirect the fact finder, and materially alter the narrative by making repeated claims of "I do not

remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts (**BR 38**).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 18**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 19**).
- Inspector Jesse Lance has been a member of service for 22 years and has been a subject in four other cases and 17 other allegations, one of which was substantiated:
 - 201700136 involved a substantiated allegation of premises entered and/or searched, for which the CCRB recommended charges, but he was found not guilty at trial and no penalty was imposed by the NYPD.
- Police Officer Corey Johnson has been a member of service for five years and has been a subject in four other cases and seven other allegations, two of which were substantiated in one case:
 - 201909824 involved substantiated allegations of frisk and search, for which he received formalized training.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED] filed a Notice of Claim with the City of New York claiming injuries to his physical and emotional well-being and violations of his constitutional, common law, and statutory rights. The amount he seeks as redress will be determined by a jury (**BR 36**).

Squad: ___2___

Investigator:	<u>Inv. Dean</u> Signature	<u>Inv. Dean</u> Print Title & Name	<u>9/23/21</u> Date
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Squad Leader:	<u>Alexander Opoku-Agyemang</u> Signature	<u>IM Alexander Opoku-Agyemang</u> Print Title & Name	<u>9/23/2021</u> Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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